

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
May 13, 2009 Session

**STATE OF TENNESSEE v. MICHAEL WAYNE THOMAS**

**Direct Appeal from the Circuit Court for Franklin County**  
**No. 16167      Thomas W. Graham, Judge**

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**No. M2008-02763-CCA-R3-CD - Filed June 26, 2009**

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The Defendant, Michael Wayne Thomas, pled guilty to manufacturing a Schedule II controlled substance, and the trial court sentenced him to a four-year suspended sentence and ordered him to meet the conditions of a community corrections sentence. A warrant was issued alleging the Defendant had violated his probation, and, after a hearing, the trial court revoked the Defendant's probation. On appeal the Defendant concedes that he violated his probation but contends that his probation supervision was in violation of Tennessee Department of Correction ("TDOC") rules regarding the use of community corrections funding and that this Court should review the record and law to determine whether this violation should nullify the order revoking his probation. After a thorough review of the evidence and the applicable authorities, we affirm the trial court's judgment.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and ALAN E. GLENN, JJ., joined.

Vanessa King (at hearing), Philip A. Condra and Robert G. Morgan (on appeal) Jasper, Tennessee, for the Appellant, Michael Wayne Thomas.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Melissa Roberge, Assistant Attorney General; J. Michael Taylor, District Attorney General; Steve Blount, Assistant District Attorney General, for the Appellee, State of Tennessee.

**OPINION**

**I. Facts**

In 2004, the Defendant pled guilty to the manufacturing of a Schedule II controlled substance. The trial court imposed a four-year probated sentence. The trial court further ordered

that the Defendant must “meet the conditions of a comm[unity] corr[ections] program as a condition of [his] probation.” In 2008, the trial court issued a warrant alleging that the Defendant violated the conditions of the community corrections program by failing to report, failing to notify his case officer of an address change, failing to pay fees and costs, and absconding from the program.

At a hearing to determine whether the Defendant had violated the terms of his probation, the following evidence was presented: the State reminded the trial court that, in March 2005, the trial court revoked the Defendant’s probation for the Defendant’s violation of house arrest, for failure to properly report to his case officer, and for positive drug screens. The trial court ordered the Defendant to serve 100 days in jail, after which the Defendant could resume his probation with the community corrections requirements. The State also reminded the trial court that, in November 2005, the trial court again revoked the Defendant’s probation based upon the Defendant’s new criminal conduct. The trial court ordered the Defendant to serve 120 days, after which he was to be placed back on probation with the community corrections requirements.

The State informed the trial court that the revocation that was the subject of the hearing was filed on July 14, 2008, and alleged that the Defendant failed to properly report to his case officer, failed to notify his case officer of an address change, failed to pay his fees and costs, and absconded from supervision.

The date of the probation violation hearing was October 14, 2008. Jason Wallace testified the last time he saw the Defendant was December 12, 2007. The Defendant’s probation required the Defendant to report to Wallace twice a month and required Wallace to visit the Defendant in his home once every three months. In December 2007, the Defendant was supposed to be living in Hillsboro, Tennessee. Wallace testified that, before December 2007, the Defendant had reported to him as required. When the Defendant failed to report, Wallace called the phone numbers that the Defendant had provided and sent a letter to the Defendant’s last known address. Wallace filed a warrant and attempted to try to locate the Defendant for six or seven months. He also visited the address provided by the Defendant, but no one lived in the trailer located at the address.

On cross-examination, Wallace clarified that he was an officer for the community corrections program and not for state probation. He also said that the Defendant had completed his community service. The Defendant had previously failed a drug screen, which violated his probation, but he had since passed other drug screens.

The Defendant testified he stopped reporting because he lost his job and got into a car accident. He said he had since found other employment. The Defendant conceded that he moved and did not provide his probation officer his new address, explaining that he had lost his probation officer’s phone numbers. The Defendant assured the court that he had the ability to pay the court costs and fees that he had incurred. The Defendant said he reported to a community corrections officer when he reported for the first time after being sentenced to probation. He had never reported to a state probation officer. On cross-examination, the

Defendant agreed he understood the terms of his probation, in part because he had previously violated them.

Based upon this evidence, the trial court revoked the Defendant's probation and ordered him to serve the balance of his sentence in prison.

## **II. Analysis**

On appeal, the Defendant concedes that he violated his probation. He, however, contends that his probation supervision was in violation of TDOC rules regarding the use of community corrections funding and that this Court should review the record and law to determine whether this violation of TDOC rules should nullify the order revoking his probation. The Defendant asserts that state probation sentences and community corrections sentences generally have different supervisors. In Franklin County, according to the Defendant, a probation officer is a State employee, while a community corrections officer is a contract employee. The Defendant contends that, while both are tied to the TDOC and perform similar roles, the roles are different. He asks us to determine the proper delineation of the duties and responsibilities for probation supervision when the conditions of community corrections are imposed upon a state probationer placed on state probation and not on community corrections.

The State responds that the Defendant presented no proof to the trial court regarding this issue. Further, it asserts that the trial court found that the State does not offer intensive probation in this area, and, therefore, community corrections officers actually do the supervision. Finally, the State contends that this challenge is unrelated to the issue of whether the trial court abused its discretion when it revoked the Defendant's probation.

Although the record on this issue is sparse, when addressing this issue with the parties, the trial court stated that the reason for placing an offender on state probation under community corrections supervision, was that an offender on state probation did not receive day-for-day jail credit while on probation like an offender on community corrections. The court stated, "The problem we were running into was slowness to react by the . . . then Community Corrections program resulting in people getting credit for their whole sentence when maybe a good portion[] of [th]em . . . hadn't done anything. This way they don't get that kind of credit." The court also explained that the reason for sentencing an offender this way was that there was no intensive probation in their local district.

The Defendant contends that he was not placed on community corrections but was placed on state probation, subject to the same conditions as a defendant placed on community corrections. TDOC regulations, he contends, prohibit community corrections funds from being utilized to supervise probationers on state probation, because state probation is an "already existing program" funded by a local or State funding source. *See* Tenn. Community Corrections Program, Rule 0420-2-2-.09(4)(a) (stating that community corrections funds "shall not be utilized by the local unit of government or private agency to substitute for an already existing program funded by a local, state or federal funding source").

Tennessee Code Annotated section 40-36-106(f), the statute governing community corrections, states, “Nothing in this section shall prevent a court from permitting an eligible defendant to participate in a community-based alternative to incarceration as a condition of probation in conjunction with a suspended sentence, split confinement or periodic confinement as provided in chapter 35 of this title.” (2006). This statute clearly allows a trial court to order a sentence of state probation, with participation in the community corrections program as a condition of state probation. *See State v. James Ray Bartlett*, No. M2002-01868-CCA-R3-CD, 2004 WL 1372847, at \*1 (Tenn. Crim. App., at Nashville, June 16, 2004), *perm. app. denied* (Tenn. Nov. 15, 2004) *see State v. Cornelius D. Pierce*, No. M2005-02650-CCA-R3-CD, 2006 WL 3071328, at \*2 (Tenn. Crim. App., at Nashville, Oct. 30, 2006), *perm. app. denied* (Tenn. Feb. 26, 2007). Participation in a community corrections program would logically require some degree of supervision by a community corrections officer. Further, the trial court noted that Franklin County did not have an intensive state probation program of supervision available for defendants, and thus the court was relying on the community corrections program for this type of supervision. Therefore, it does not appear that the community corrections program was being utilized to substitute for an existing program in Franklin County. Based on the record before us, the Defendant is not entitled to relief on this issue.

Turning to address the issue whether the Defendant herein violated his probation, when a trial court determines by a preponderance of the evidence that a probationer has violated the conditions of his or her probation, the trial court has the authority to revoke probation. T.C.A. § 40-35-311(e) (2006). Upon finding that the defendant has violated the conditions of probation, the trial court may revoke the probation and either: (1) order incarceration; (2) order the original probationary period to commence anew; (3) extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 644 (Tenn. 1999); *see* T.C.A. § 40-35-310 (2006); T.C.A. § 40-35-311 (e) (2006); T.C.A. § 40-35-308(c) (2006). The defendant has the right to appeal the revocation of his probation and entry of his original sentence. T.C.A. § 40-35-311 (e). Upon a finding of a violation, the trial court is vested with the statutory authority to “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered . . . .” T.C.A. § 40-35-311 (e); *Hunter*, 1 S.W.3d at 646 (holding that the trial court retains the discretionary authority to order the defendant to serve his or her original sentence in confinement). Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension . . . .” T.C.A. § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

The decision to revoke probation is in the sound discretion of the trial judge. *State v. Kendrick*, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005); *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). To find an abuse of discretion in a probation revocation case, the record must be void of any substantial evidence that would support the trial court’s decision that a violation of the conditions of probation occurred. *Id.*; *State v. Grear*, 568 S.W.2d 285, 286 (Tenn. 1978); *State v. Delp*, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). Proof of a probation violation is

sufficient if it allows the trial court to make a conscientious and intelligent judgment. *State v. Milton*, 673 S.W.2d 555, 557 (Tenn. Crim. App. 1984). In reviewing the trial court's finding, it is our obligation to examine the record and determine whether the trial court has exercised a conscientious judgment rather than an arbitrary one. *Mitchell*, 810 S.W.2d at 735.

In the case under submission, the Defendant admitted a violation of the terms of probation by failing to report. This alone is substantial evidence to support the trial court's revocation order. *See State v. Christopher Nathaniel Richardson*, No. M2006-01060-CCA-R3-CD, 2007 WL 776876, at \*4 (Tenn. Crim. App., at Nashville, Mar. 15, 2007); *State v. Eric Devaney*, No. E2005-01986-CCA0R3-CD, 2006 WL 2373469, at \*4 (Tenn. Crim. App., at Knoxville, Aug. 17, 2006), *no Tenn. R. App. P. 11 application filed*; *State v. Michael Emler*, No. 01C01-9512-CC-00424, 1996 WL 691018, at \*2 (Tenn. Crim. App., at Nashville, Nov. 27, 1996) (holding that where the defendant admits a violation of the terms of probation, revocation by the trial court is neither arbitrary nor capricious), *no Tenn. R. App. P. 11 application filed*.

We conclude that the trial court properly sentenced the Defendant to a sentence of state probation, with the conditions of the community corrections programs as a condition of probation. We agree with the trial court that the supervision of the Defendant by a community corrections officer was not illegal, and we conclude that the supervision of the Defendant by a community corrections officer does not nullify the order revoking his probation. Further, the trial court did not abuse its discretion when it determined that the Defendant violated that probation and revoked the Defendant's probation.

### **III. Conclusion**

After a thorough review of the record and applicable authorities, we affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE